

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

*In the Matter of the Petition for Redetermination under the Sales and Use Tax Law of SUSAN LORIE TYLOCK Petitioner*

*Appearances:*

<i>For Claimant:</i>	David Colker Attorney
<i>For Business Taxes Appeals Review Section:</i>	Susan Wengel Assistant Chief Counsel
<i>For Sales and Use Tax Department:</i>	Gary J. Jugum Assistant Chief Counsel Warren Astleford Senior Tax Counsel

MEMORANDUM OPINION

Before the Board in this case is the application of sales tax to petitioner's charge for disposable temperature recording devices (temperature recorders) which petitioner sold to shippers of perishable agricultural produce. The function of the temperature recorders petitioner sold was to track and record temperatures of the produce while it was in possession of a common carrier who transported the produce in a conveyance (e.g., vehicle or rail car) from the produce shipper to the produce purchasers.

The temperature recorders are capable of recording temperatures over a period of 10, 15, or 30 days. Generally, the produce purchaser uses the data from the temperature recorder to verify whether the common carrier maintained the proper temperature inside the vehicle or rail car in which the carrier transported the produce. For example, if the produce were to reach the destination damaged, the purchaser could determine from recordings made by the temperature recorder whether the damage was caused by the carrier's failure to maintain proper temperature levels in the vehicle or freight car during transportation.

In a typical transaction, petitioner purchased a temperature recorder from the manufacturer and sold it to a produce shipper who had a contract to supply produce to an out-of-state buyer. The produce shippers separately listed on their invoice to the purchaser the charge for the temperature recorder and the charge for the produce. In all cases in issue, the produce shippers were required to ship the produce and the temperature recorders to a point outside of this state. The produce shippers contracted with the common carriers to perform that transportation. The produce shipper marked the recorders for identification purposes and either started the recorders when the recorders were placed on the carrier's conveyance or merely transferred possession of the temperature recorder to the carrier's employee who would start the recorder on the conveyance.

If the carrier delivered the produce to the out-of-state destination damaged, the produce purchaser shipped the temperature recorder to the recorder's manufacturer which interpreted the recorded temperature data. The produce buyer could then determine if it had evidence to support a claim for damages against the carrier for not maintaining the proper temperature of the perishable goods. If the produce arrived at the destination undamaged, the produce buyer could discard the temperature recorder or could return it to the manufacturer for a "refund allowance". The recorders were never returned to petitioner, the produce shipper, or the carrier.

#### OPINION

We conclude that petitioner's sales of temperature recorders to produce shippers were nontaxable sales for resale; that is, the produce shipper purchased the temperature recorders to sell to the purchaser of the produce to whom the produce and the temperature recorders were shipped. We found that neither the produce shipper nor the carrier made a use of the temperature recorders merely by starting them in this state on the carrier's vehicle or rail car.

We conclude that the produce shippers were required, pursuant to their contract with the produce buyers, to ship the temperature recorders to a point outside of this state and did so ship the temperature recorders to the out-of-state point by means of the common carrier of the produce. Accordingly, the produce shippers' sales of the temperature recorders to the out-of-state produce buyers were exempt sales in interstate commerce under Revenue and Taxation Code section 6396.

Done at Sacramento, California, this 25th day of February, 1999.

Dean F. Andal, Member  
Claude Parrish, Member  
John Chiang, Member